

MERCHANT, GOULD, SMITH, EDELL, WELTER & SCHMIDT

United States Patent Application

COMBINED DECLARATION AND POWER OF ATTORNEY

As a below named inventor I hereby declare that: my residence, post office address and citizenship are as stated below next to my name; that

I verily believe I am the original, first and sole inventor (if only one name is listed below) or a joint inventor (if plural inventors are named below) of the subject matter which is claimed and for which a patent is sought on the invention entitled: ANALYTE MONITORING DEVICE AND METHODS OF USE

The specification of which

- a. is attached hereto
- b. is entitled ANALYTE MONITORING DEVICE AND METHODS OF USE, having an attorney docket number 12008.15US01
- c. was filed on April 30, 1998 as application serial no. 09/070,677 and was amended on (if applicable) (in the case of a PCT-filed application) described and claimed in international no. filed and as amended on (if any), which I have reviewed and for which I solicit a United States patent.

I hereby state that I have reviewed and understand the contents of the above-identified specification, including the claims, as amended by any amendment referred to above.

I acknowledge the duty to disclose information which is material to the patentability of this application in accordance with Title 37, Code of Federal Regulations, § 1.56 (attached hereto).

I hereby claim foreign priority benefits under Title 35, United States Code, § 119/365 of any foreign application(s) for patent or inventor's certificate listed below and have also identified below any foreign application for patent or inventor's certificate having a filing date before that of the application on the basis of which priority is claimed:

- a. no such applications have been filed.
- b. such applications have been filed as follows:

FOREIGN APPLICATION(S), IF ANY, CLAIMING PRIORITY UNDER 35 USC § 119			
COUNTRY	APPLICATION NUMBER	DATE OF FILING (day, month, year)	DATE OF ISSUE (day, month, year)
ALL FOREIGN APPLICATION(S), IF ANY, FILED BEFORE THE PRIORITY APPLICATION(S)			
COUNTRY	APPLICATION NUMBER	DATE OF FILING (day, month, year)	DATE OF ISSUE (day, month, year)

I hereby claim the benefit under Title 35, United States Code, § 120/365 of any United States and PCT international application(s) listed below and, insofar as the subject matter of each of the claims of this application is not disclosed in the prior United States application in the manner provided by the first paragraph of Title 35, United States Code, § 112, I acknowledge the duty to disclose material information as defined in Title 37, Code of Federal Regulations, § 1.56(a) which occurred between the filing date of the prior application and the national or PCT international filing date of this application.

U.S. APPLICATION NUMBER	DATE OF FILING (day, month, year)	STATUS (patented, pending, abandoned)

I hereby claim the benefit under Title 35, United States Code § 119(e) of any United States provisional application(s) listed below:

U.S. PROVISIONAL APPLICATION NUMBER	DATE OF FILING (Day, Month, Year)

I hereby appoint the following attorney(s) : patent agent(s) to prosecute this application. to transact all business in the Patent and Trademark Office connected herewith:

Albrecht, John W.	Reg. No. 40,481	Lacy, Paul E.	Reg. No. 38,946
Ansems, Gregory M.	Reg. No. P-42,264	Larson, James A.	Reg. No. 40,443
Batzli, Brian H.	Reg. No. 32,960	Lasky, Michael B.	Reg. No. 29,555
Beard, John L.	Reg. No. 27,612	Lindquist, Timothy A.	Reg. No. 40,701
Berman, Charles	Reg. No. 29,249	Lynch, David W.	Reg. No. 36,204
Black, Bruce E.	Reg. No. P-41,622	McDaniel, Karen D.	Reg. No. 37,674
Blasdell, Thomas L.	Reg. No. 31,329	McDonald, Daniel W.	Reg. No. 32,044
Bogucki, Raymond A.	Reg. No. 17,426	McIntyre, Iain A.	Reg. No. 40,337
Bruess, Steven C.	Reg. No. 34,130	Mueller, Douglas P.	Reg. No. 30,300
Byrne, Linda M.	Reg. No. 32,404	Nasiedlak, Tyler L.	Reg. No. 40,099
Canady, Karen S.	Reg. No. 39,927	Nelson, Albin J.	Reg. No. 28,650
Carlson, Alan G.	Reg. No. 25,959	Orler, Anthony J.	Reg. No. 41,232
Carter, Charles G.	Reg. No. 35,093	Pauly, Daniel M.	Reg. No. 40,123
Caspers, Philip P.	Reg. No. 33,227	Plunkett, Theodore	Reg. No. 37,209
Chiapetta, James R.	Reg. No. 39,634	Reich, John C.	Reg. No. 37,703
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Daignault, Ronald A.	Reg. No. 25,968	Rittmaster, Ted R.	Reg. No. 32,933
Daley, Dennis R.	Reg. No. 34,994	Schmaltz, David G.	Reg. No. 39,828
Dalglash, Leslie E.	Reg. No. 40,579	Schuman, Mark D.	Reg. No. 31,197
Daulton, Julie R.	Reg. No. 36,414	Schumann, Michael D.	Reg. No. 30,422
DeVries Smith, Kate	Reg. No. P-42,157	Sebald, Gregory A.	Reg. No. 33,280
DiPietro, Mark J.	Reg. No. 28,707	Sharp, Janice A.	Reg. No. 34,051
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Epp Ryan, Sandra	Reg. No. 39,667	Smith, Jerome R.	Reg. No. 35,684
Farber, Michael B.	Reg. No. 32,612	Soderberg, Richard	Reg. No. -P-43,352
Funk, Steven R.	Reg. No. 37,830	Sumner, John P.	Reg. No. 29,114
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Golla, Charles E.	Reg. No. 26,896	Tellekson, David K.	Reg. No. 32,314
Gorman, Alan G.	Reg. No. 38,472	Trembath, Jon R.	Reg. No. 38,344
Gould, John D.	Reg. No. 18,223	Underhill, Albert L.	Reg. No. 27,403
Gregson, Richard	Reg. No. P-41,804	Vandenburgh, J. Derek	Reg. No. 32,179
Gresens, John J.	Reg. No. 33,112	Victor, David W.	Reg. No. 39,867
Hamre, Curtis B.	Reg. No. 29,165	Welter, Paul A.	Reg. No. 20,890
Hillson, Randall A.	Reg. No. 31,838	Whipps, Brian	Reg. No. P-43,261
Johnston, Scott W.	Reg. No. 39,721	Williams, Douglas J.	Reg. No. 27,054
Kastelic, Joseph M.	Reg. No. 37,160	Witt McDonald, Jonelle	Reg. No. P-41,980
Kettelberger, Denise	Reg. No. 33,924	Wood, Gregory B.	Reg. No. 28,133
Komanduri, Janaki	Reg. No. 40,684	Wood, William J.	Reg. No. P-42,236
Kowalchyk, Alan W.	Reg. No. 31,535	Xu, Min S.	Reg. No. 39,536
Kowalchyk, Katherine M.	Reg. No. 36,848		

I hereby authorize them to act and rely on instructions from and communicate directly with the person/assignee/attorney/firm/ organization who/which first sends/sent this case to them and by whom/which I hereby declare that I have consented after full disclosure to be represented unless/until I instruct Merchant, Gould, Smith, Edell, Welter & Schmidt to the contrary.

Please direct all correspondence in this case to Merchant, Gould, Smith, Edell, Welter & Schmidt at the address indicated below:

Merchant, Gould, Smith, Edell,
Welter & Schmidt
3100 Norwest Center
90 South Seventh Street
Minneapolis, MN 55402-4131

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

2	Full Name Of Inventor	Family Name SAY	First Given Name JAMES	Second Given Name
0	Residence & Citizenship	City ALAMEDA	State or Foreign Country CALIFORNIA	Country of Citizenship USA
1	Post Office Address	Post Office Address 460 COLA BALLENA #A	City ALAMEDA	State & Zip Code/Country CALIFORNIA 94501/USA

Signature of Inventor 201:

Date:

6/25/98

2	Full Name Of Inventor	Family Name TOMASCO	First Given Name MICHAEL	Second Given Name F.
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2	Post Office Address	Post Office Address 22528 POPPY DRIVE	City CUPERTINO	State & Zip Code/Country CALIFORNIA 95015/USA

Signature of Inventor 202:

Date:

6/26/98

2	Full Name Of Inventor	Family Name HELLER	First Given Name ADAM	Second Given Name
0	Residence & Citizenship	City AUSTIN	State or Foreign Country TEXAS	Country of Citizenship USA
3	Post Office Address	Post Office Address 5317 VALBURN CIRCLE	City AUSTIN	State & Zip Code/Country TEXAS 78731/USA

Signature of Inventor 203:

Date:

June 25, 1998

2	Full Name Of Inventor	Family Name GAL	First Given Name YORAM	Second Given Name
0	Residence & Citizenship	City KIBBUTZ YAGUR	State or Foreign Country ISRAEL	Country of Citizenship ISRAEL
4	Post Office Address	Post Office Address P.O. BOX 126	City KIBBUTZ YAGUR, 30065	State & Zip Code/Country ISRAEL

Signature of Inventor 204:

Date:

2	Full Name Of Inventor	Family Name ARIA	First Given Name BEHRAD	Second Given Name
0	Residence & Citizenship	City ALAMEDA	State or Foreign Country CALIFORNIA	Country of Citizenship USA
5	Post Office Address	Post Office Address 817 SANTA CLARA AVENUE	City ALAMEDA	State & Zip Code/Country CALIFORNIA 94502/USA

Signature of Inventor 205:

Date:

6/26/98

2	Full Name Of Inventor	Family Name HELLER	First Given Name EPHRAIM	Second Given Name
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6	Post Office Address	Post Office Address 8101 SKYLINE BOULEVARD	City OAKLAND	State & Zip Code/Country CALIFORNIA 94611/USA

Signature of Inventor 206: *Ephraim Heller* Date: 6/22/98

2	Full Name Of Inventor	Family Name PLANTE	First Given Name PHILLIP	Second Given Name JOHN
0	Residence & Citizenship	City SUNNYVALE	State or Foreign Country CALIFORNIA	Country of Citizenship USA
7	Post Office Address	Post Office Address M-116, 655 SOUTH FAIR OAKS AVENUE	City SUNNYVALE	State & Zip Code/Country CALIFORNIA 94086/USA

Signature of Inventor 207: *Phillip J. Planté* Date: 6/25/98

2	Full Name Of Inventor	Family Name VREEKE	First Given Name MARK	Second Given Name S.
0	Residence & Citizenship	City ALAMEDA	State or Foreign Country CALIFORNIA	Country of Citizenship USA
8	Post Office Address	Post Office Address 2826 CALHOUN STREET	City ALAMEDA	State & Zip Code/Country CALIFORNIA 94501/USA

Signature of Inventor 208: *Mark Vreeke* Date: 6/25/98

2	Full Name Of Inventor	Family Name FRIEDMAN	First Given Name KEITH	Second Given Name A.
0	Residence & Citizenship	City AUSTIN	State or Foreign Country TEXAS	Country of Citizenship USA
9	Post Office Address	Post Office Address 500 E. RIVERSIDE DRIVE, APT. 230	City AUSTIN	State & Zip Code/Country TEXAS 78704/USA

Signature of Inventor 209: *Keith A Friedman* Date: 6/30/98

2	Full Name Of Inventor	Family Name COLMAN	First Given Name FREDRIC	Second Given Name C.
1	Residence & Citizenship	City BERKELEY	State or Foreign Country CALIFORNIA	Country of Citizenship USA
0	Post Office Address	Post Office Address 6879 BRISTOL DRIVE	City BERKELEY	State & Zip Code/Country CALIFORNIA 94705/USA

Signature of Inventor 210: *Fredric Colman* Date: 6-25-98

§ 1.5€ Duty to disclose information material to patentability.

(a) A patent by its very nature is affected with a public interest. The public interest is best served, and the most effective patent examination occurs when, at the time an application is being examined, the Office is aware of and evaluates the teachings of all information material to patentability. Each individual associated with the filing and prosecution of a patent application has a duty of candor and good faith in dealing with the Office, which includes a duty to disclose to the Office all information known to that individual to be material to patentability as defined in this section. The duty to disclose information exists with respect to each pending claim until the claim is canceled or withdrawn from consideration, or the application becomes abandoned. Information material to the patentability of a claim that is canceled or withdrawn from consideration need not be submitted if the information is not material to the patentability of any claim remaining under consideration in the application. There is no duty to submit information which is not material to the patentability of any existing claim. The duty to disclose all information known to be material to patentability is deemed to be satisfied if all information known to be material to patentability of any claim issued in a patent was cited by the Office or submitted to the Office in the manner prescribed by §§ 1.97(b)-(d) and 1.98. However, no patent will be granted on an application in connection with which fraud on the Office was practiced or attempted or the duty of disclosure was violated through bad faith or intentional misconduct. The Office encourages applicants to carefully examine:

- (1) prior art cited in search reports of a foreign patent office in a counterpart application, and
- (2) the closest information over which individuals associated with the filing or prosecution of a patent application believe any pending claim patentably defines, to make sure that any material information contained therein is disclosed to the Office.

(b) Under this section, information is material to patentability when it is not cumulative to information already of record or being made of record in the application, and

- (1) It establishes, by itself or in combination with other information, a prima facie case of unpatentability of a claim; or
- (2) It refutes, or is inconsistent with, a position the applicant takes in:
 - (i) Opposing an argument of unpatentability relied on by the Office, or
 - (ii) Asserting an argument of patentability.

A prima facie case of unpatentability is established when the information compels a conclusion that a claim is unpatentable under the preponderance of evidence, burden-of-proof standard, giving each term in the claim its broadest reasonable construction consistent with the specification, and before any consideration is given to evidence which may be submitted in an attempt to establish a contrary conclusion of patentability.

(c) Individuals associated with the filing or prosecution of a patent application within the meaning of this section are:

- (1) Each inventor named in the application;
- (2) Each attorney or agent who prepares or prosecutes the application; and
- (3) Every other person who is substantively involved in the preparation or prosecution of the application and who is associated with the inventor, with the assignee or with anyone to whom there is an obligation to assign the application.

(d) Individuals other than the attorney, agent or inventor may comply with this section by disclosing information to the attorney, agent, or inventor.

United States Patent Application

COMBINED DECLARATION AND POWER OF ATTORNEY

As a below named inventor I hereby declare that: my residence, post office address and citizenship are as stated below next to my name; that

I verily believe I am the original, first and sole inventor (if only one name is listed below) or a joint inventor (if plural inventors are named below) of the subject matter which is claimed and for which a patent is sought on the invention entitled: ANALYTE MONITORING DEVICE AND METHODS OF USE

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- b. is entitled ANALYTE MONITORING DEVICE AND METHODS OF USE, having an attorney docket number 12008.15US01
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FOREIGN APPLICATION(S), IF ANY, CLAIMING PRIORITY UNDER 35 USC § 119

COUNTRY	APPLICATION NUMBER	DATE OF FILING (day, month, year)	DATE OF ISSUE (day, month, year)

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U.S. APPLICATION NUMBER	DATE OF FILING (day, month, year)	STATUS (patented, pending, abandoned)

I hereby claim the benefit under Title 35, United States Code § 119(e) of any United States provisional application(s) listed below:

U.S. PROVISIONAL APPLICATION NUMBER	DATE OF FILING (Day, Month, Year)

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Albrecht, John W.	Reg. No. 40,481	Lacy, Paul E.	Reg. No. 38,946
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Batzli, Brian H.	Reg. No. 32,960	Lasky, Michael B.	Reg. No. 29,555
Beard, John L.	Reg. No. 27,612	Lindquist, Timothy A.	Reg. No. 40,701
Berman, Charles	Reg. No. 29,249	Lynch, David W.	Reg. No. 36,204
Black, Bruce E.	Reg. No. P-41,622	McDaniel, Karen D.	Reg. No. 37,674
Blasdell, Thomas L.	Reg. No. 31,329	McDonald, Daniel W.	Reg. No. 32,044
Bogucki, Raymond A.	Reg. No. 17,426	McIntyre, Iain A.	Reg. No. 40,337
Bruess, Steven C.	Reg. No. 34,130	Mueller, Douglas P.	Reg. No. 30,300
Byrne, Linda M.	Reg. No. 32,404	Nasiedlak, Tyler L.	Reg. No. 40,099
Canady, Karen S.	Reg. No. 39,927	Nelson, Albin J.	Reg. No. 28,650
Carlson, Alan G.	Reg. No. 25,959	Orler, Anthony J.	Reg. No. 41,232
Carter, Charles G.	Reg. No. 35,093	Pauly, Daniel M.	Reg. No. 40,123
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Glance, Robert J.	Reg. No. 40,620	Sumners, John S.	Reg. No. 24,216
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Gorman, Alan G.	Reg. No. 38,472	Trembath, Jon R.	Reg. No. 38,344
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Kowalchyk, Alan W.	Reg. No. 31,535	Xu, Min S.	Reg. No. 39,536
Kowalchyk, Katherine M.	Reg. No. 36,848		

hereby authorize them to act and rely on instructions from and communicate directly with the person/assignee/attorney/firm/ organization who/which first sends/sent this case to them and by whom/which I hereby declare that I have consented after full disclosure to be represented unless/until I instruct Merchant, Gould, Smith, Edell, Welter & Schmidt to the contrary.

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Merchant, Gould, Smith, Edell,
Welter & Schmidt
3100 Norwest Center
90 South Seventh Street
Minneapolis, MN 55402-4131

I hereby declare that all statements made hereof of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

2	Full Name Of Inventor	Family Name SAY	First Given Name JAMES	Second Given Name
0	Residence & Citizenship	City ALAMEDA	State or Foreign Country CALIFORNIA	Country of Citizenship USA
1	Post Office Address	Post Office Address 460 COLA BALLENA #A	City ALAMEDA	State & Zip Code/Country CALIFORNIA 94501/USA

Signature of Inventor 201:

Date:

2	Full Name Of Inventor	Family Name TOMASCO	First Given Name MICHAEL	Second Given Name F.
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2	Post Office Address	Post Office Address 22528 POPPY DRIVE	City CUPERTINO	State & Zip Code/Country CALIFORNIA 95015/USA

Signature of Inventor 202:

Date:

2	Full Name Of Inventor	Family Name HELLER	First Given Name ADAM	Second Given Name
0	Residence & Citizenship	City AUSTIN	State or Foreign Country TEXAS	Country of Citizenship USA
3	Post Office Address	Post Office Address 5317 VALBURN CIRCLE	City AUSTIN	State & Zip Code/Country TEXAS 78731/USA

Signature of Inventor 203:

Date:

2	Full Name Of Inventor	Family Name GAL	First Given Name YORAM	Second Given Name
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Signature of Inventor 204:

Date:

2 July 98

2	Full Name Of Inventor	Family Name ARIA	First Given Name BEHRAD	Second Given Name
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Signature of Inventor 205:

Date:

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Signature of Inventor 206:

Date:

2	Full Name Of Inventor	Family Name PLANTE	First Given Name PHILLIP	Second Given Name JOHN
0	Residence & Citizenship	City SUNNYVALE	State or Foreign Country CALIFORNIA	Country of Citizenship USA
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Signature of Inventor 207:

Date:

2	Full Name Of Inventor	Family Name VREEKE	First Given Name MARK	Second Given Name S.
0	Residence & Citizenship	City ALAMEDA	State or Foreign Country CALIFORNIA	Country of Citizenship USA
8	Post Office Address	Post Office Address 2826 CALHOUN STREET	City ALAMEDA	State & Zip Code/Country CALIFORNIA 94501/USA

Signature of Inventor 208:

Date:

2	Full Name Of Inventor	Family Name FRIEDMAN	First Given Name KEITH	Second Given Name A.
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Date:

2	Full Name Of Inventor	Family Name COLMAN	First Given Name FREDRIC	Second Given Name C.
1	Residence & Citizenship	City BERKELEY	State or Foreign Country CALIFORNIA	Country of Citizenship USA
0	Post Office Address	Post Office Address 6879 BRISTOL DRIVE	City BERKELEY	State & Zip Code/Country CALIFORNIA 94705/USA

Signature of Inventor 210:

Date:

§ 1.56 Duty to disclose information material to patentability.

(a) A patent by its very nature is affected with a public interest. The public interest is best served, and the most effective patent examination occurs when, at the time an application is being examined, the Office is aware of and evaluates the teachings of all information material to patentability. Each individual associated with the filing and prosecution of a patent application has a duty of candor and good faith in dealing with the Office, which includes a duty to disclose to the Office all information known to that individual to be material to patentability as defined in this section. The duty to disclose information exists with respect to each pending claim until the claim is canceled or withdrawn from consideration, or the application becomes abandoned. Information material to the patentability of a claim that is canceled or withdrawn from consideration need not be submitted if the information is not material to the patentability of any claim remaining under consideration in the application. There is no duty to submit information which is not material to the patentability of any existing claim. The duty to disclose all information known to be material to patentability is deemed to be satisfied if all information known to be material to patentability of any claim issued in a patent was cited by the Office or submitted to the Office in the manner prescribed by §§ 1.97(b)-(d) and 1.98. However, no patent will be granted on an application in connection with which fraud on the Office was practiced or attempted or the duty of disclosure was violated through bad faith or intentional misconduct. The Office encourages applicants to carefully examine:

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 - (2) It refutes, or is inconsistent with, a position the applicant takes in:
 - (i) Opposing an argument of unpatentability relied on by the Office, or
 - (ii) Asserting an argument of patentability.

A prima facie case of unpatentability is established when the information compels a conclusion that a claim is unpatentable under the preponderance of evidence, burden-of-proof standard, giving each term in the claim its broadest reasonable construction consistent with the specification, and before any consideration is given to evidence which may be submitted in an attempt to establish a contrary conclusion of patentability.

- (c) Individuals associated with the filing or prosecution of a patent application within the meaning of this section are:
 - (1) Each inventor named in the application;
 - (2) Each attorney or agent who prepares or prosecutes the application; and
 - (3) Every other person who is substantively involved in the preparation or prosecution of the application and who is associated with the inventor, with the assignee or with anyone to whom there is an obligation to assign the application.
- (d) Individuals other than the attorney, agent or inventor may comply with this section by disclosing information to the attorney, agent, or inventor.

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
APPLICATION FOR UNITED STATES PATENT

In re Patent Application of) Group Art Unit:
)
JAMES SAY et al.) **POWER OF ATTORNEY**
)
Appln. No. Filed Herewith)
)
Filed: February 27, 2004) Jackson & Co., LLP
) 6114 La Salle Ave., #507
) Oakland, CA 94611-2802
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 DEVICE AND METHODS OF) Facsimile: (510) 652-5691
 USE)
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Mail Stop Patent Application
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Sir:

Applicants herein revoke all previous Power of Attorneys and hereby appoints

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and to transact all business in the Patent and Trademark Office in connection therewith.

Please direct all correspondence regarding this application to the following:

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Dated: 2/26/04

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